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No. 45] NEW DELHI, SATURDAY, FEBRUARY 21, 1953

ELECTION COMMISSION, INDIA
NOTIFICATIONS

New Delhi, the 21st February 1953

S.R.O. 361.—WHEREAS the election of Shri Ram Singh, as a member of the Legislative Assembly of the State of Patiala and East Punjab States Union from the Julana Constituency of that Assembly, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951) by Shri Ghasi Ram, son of Ch. Shiv Nath, Village Julana, Tehsil Jind, District Sangrur, PEPSU;

AND WHEREAS the Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act for the trial of the said petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Election Commission;

NOW, THEREFORE, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, PATIALA

V. B. Sarwate—*Chairman.*

Raghunandan Saran—*Member.*

E. M. Joshi—*Member.*

ELECTION PETITION No. 100 OF 1952

Petitioner:

Shri Ghasi Ram, s/o Ch. Shiv Nath, resident of V. Julana, Tehsil Jind, District Sangrur, Pepsu.

Versus

Respondents:

1. Shri Ram Singh, s/o Ch. Herchand Singh, resident of V. Zafargarh, Teh. Jind, district Sangrur, Pepsu.
2. Shri Chander Datt, s/o Shri Brahm Datt of village Nandgarh, Teh. Jind, district Sangrur, Pepsu.
3. Shri Chander Singh, s/o Shri Net Ram of village Julana, Teh. Jind, district Sangrur, Pepsu.

4. Shri Risala s/o Shri Sheo Ram of village Julana, Teh. Jind, district Sangrur, Pepsu.
5. Shri Dhan Singh s/o Shri Shiv Lal of V. Nandgarh, Teh. Jind district Sangrur, Pepsu.

ORDER DELIVERED ON 18-2-1953

The petitioner and the five respondents contested the election to the PEPSU Legislative Assembly from the Julana Constituency in which the Respondent No. 1 Ram Singh has been declared returned. The petitioner seeks to avoid the election on a number of grounds alleged in paragraphs 9 to 12 of the petition. These include allegations about certain corrupt practices on the part of Respondent No. 1 the returned candidate such as employment of a paid canvasser Kanhaya Ram to do propaganda in favour of respondent No. 1, the appointment of a Government servant Mehtab Singh as polling agent by the Respondent No. 1, and the hiring of vehicles for the conveyance of electors to and from the polling stations, about the making of a false return of election expenses by him, about certain irregularities in the proclamation and the holding of repoll at three polling stations where repoll was ordered and about the improper acceptance of the nomination paper of the 2nd respondent Chander Datt who as a holder of an office of profit under the Government is alleged to have been ineligible to stand for election. The petitioner prays for unseating the respondent No. 1 and for his disqualification under Section 140 of the Representation of the People Act, 1951.

2. The respondent No. 5 did not appear while the respondents 2, 3 and 4 have generally supported the petitioner's allegations. The respondent No. 1 has however controverted them all and has strenuously opposed the petition.

3. The following were the issues framed for trial:—

1. (a) Did Respondent No. 1 employ Kanhaya Ram for remuneration to do canvassing in support of his party and not in support of his personal candidature? Was this expenditure illegal under Section 123(7) of the Representation of People Act?
- (b) Does his employment amount to a major corrupt practice under that section?
2. (a) Does petitioner prove that Respondent No. 1 obtained or procured assistance of Ch. Mehtab Singh of Igra for furtherance of the prospects of his election?
- (b) Should Ch. Mehtab Singh, as a member of Debt Conciliation Board, be deemed to have been in the service of the Pepsu Government?
- (c) Does the employment of Mehtab Singh of Igra as above if proved, amount to a corrupt practice under Section 123(8) of the Representation of People Act?
3. Does petitioner prove that any vehicles for conveyance of the electors were employed by or on behalf of Respondent No. 1? Does he make out a major corrupt practice under Section 123(6) of the Representation of People Act?
4. Is the return of election expenses of the Respondent No. 1 false in any particulars as alleged by the petitioner and does the making of that return amount to a minor corrupt practice under section 124(4) of the Representation of People Act?
5. (a) Was the Respondent No. 2, as teacher in the Birla High School, holding an office of profit under the Government?
- (b) Was the nomination of Respondent No. 2 improperly accepted by the Returning Officer?
- (c) Has the result of the election been materially affected by improper acceptance of Respondent No. 2's nomination?
6. Did Respondent No. 1 appoint Ch. Mehtab Singh of Igra and Ch. Molar as his polling agents as alleged in para. 12(b) and (c) of the petition? Was their appointment in contravention of Rule 12 of the Representation of People Rules, 1951, and what is its effect?
7. Was service of notice about the dates of repoll on the petitioner personally necessary under the rules or under the directions of the Election Commission?

(b) Was there non-compliance in the matter of repoll of the Commissioner's directions about publication by distribution of hand bills and by beat of drum?

(c) Should the repoll be deemed to have been done in contravention of the provisions governing the repolling and were the votes recorded during the repolling not liable to be taken into account?

(d) Was the result of the election materially affected by the alleged irregularities in the repolling?

8. Is the petitioner entitled to a declaration about the election being wholly void?

9. What is the appropriate order to be made under sections 98 and 99 of the Representation of the People Act, 1951, in this case?

4. We will deal with issues IV, V, VI and VII first and dispose them of very briefly. In para. 14 of the petition the petitioner had reserved his right generally to give better and further particulars where necessary after inspection of the election records to supplement the particulars already stated in the lists appended to the petition. Such better particulars were stated on 29th September, 1952, and they included some on these issues Nos. 4 to 7 also. Some evidence was also produced at the trial in support of them but at the stage of arguments the petitioner's counsel frankly stated that he did not claim a finding in favour of the petitioner on any of them and they may even be treated as abandoned. No argument was addressed to us on these issues. Without any discussion of the evidence on these points, we find the issues IV and V as not proved. On Issue VI we find that the appointment of Ch. Mehtab Singh of Igra as polling agent which as we will find here-after was made at Bibipur Polling Station and of Ch. Molar also had not been in accordance with Rule 12 of the Representation of the People Rules, 1951, but the contravention of that rule by itself does not have any effect on the election of the respondent No. 1. On issue VII we find that no irregularity in the matter of proclamation or conduct of repoll has been established nor any contravention of any rules proved and no material affection of the result of the election by reason of any irregularity or breach of rule made out.

5. This brings us to the consideration of issues I, II and III the points arising in which were argued on both sides at some length and are in fact the main stay of the petitioner's case. The petitioner has largely drawn upon the documents of respondent No. 1's own creation in his attempt to prove the corrupt practices which are the subject matter of these issues. Confronted with these documents the respondent No. 1 Ram Singh who is a lawyer by profession and was till nearly the conclusion of the trial a Cabinet Minister of the State Government, found it necessary to meet the charges of corrupt practice, by some explanation of those documents and he attempted to do it by a series of '*suggestio falsi*' and '*suppressio veri*', and by production of evidence without regard for truth-all this, we regret to say, in a manner which could not have done credit to lesser men.

6. The first issue relates to the employment of one Kanhyaram by the Respondent No. 1 as a paid servant on a remuneration of Rs. 400/- as a preacher to do propaganda and canvass support for Ram Singh's candidature. This allegation as was stated in Appendix A to the petition filed on 5th April, 1952, was to be supported by Ram Singh's return of election expenses. In the better particulars given on 29th September, 1952, the petitioner amplified this by stating that the allegation was supported also by Voucher No. 11 filed by Ram Singh himself with the return of election expenses, and a copy of this voucher which he had been able to obtain was also produced. The reply made by Ram Singh to the case thus stated was "the allegations were false and frivolous. The said Kanhya Ram was not employed by the respondent as stated in the particulars. He was a singer who had ceased to work long before the polling began."

7. Now the reference to the return of election expenses clearly meant that the petitioner's case was that Kanhya Ram was employed by Ram Singh himself in connection with his election and therefore he had also shown the amount paid to Kanya Ram in his return of election expenses in Part F in his own writing. The voucher No. 11 which purports to be a receipt for Rs. 400/-/- given by Lehna Singh reads as under:—

"Received Rs. 400/- from Ch. Ram Singh B.A. LL.B., candidate for the PEPSU Legislative Assembly for carrying on election propaganda

and paid to Ch. Kanhya Ram Lecturer of V. Lajwana Khurd teh. Jind as remuneration for the month of December, 1951.

LEHNA SINGH DOON, 15-2-1951".

8. The nominations had been accepted on 1st December, 1951, and the taking of polls was to begin on 7th January, 1952. In the context of these dates the recitals of voucher No. 11 should clearly imply that Kanhya Ram's appointment was for doing propaganda in connection with Ram Singh's election in the month of December for which Ram Singh paid Kanhya Ram Rs. 400/- through Lehna Singh. The reply vouched in the written statement did not indicate that Ram Singh had really any explanation to offer of the above implications of the statements in the Return and in the Voucher though he chose to describe the allegations as "false and frivolous" which was in fact his one reply without discrimination to all the charges of corrupt practices made by the petitioner. In the further particulars the petitioner had referred to Section 77 of the Representation of People Act, 1951 and Rule 118 with schedule VI made under the Act as the provisions of law relied on to make out a case of this corrupt practice under section 123(7) of the Act. The petitioner by his application dated 10th October, 1952, and by the interrogatories delivered to Respondent No. 1 in pursuance of our order on that application required him to specifically admit his statement in the return of election expenses and the voucher No. 11, drawing attention to the clear implications of these documents for which he intended to use them as evidence against the respondent. A reference to the provisions above stated with the implications of the documents which could not be explained by a mere assertion "false and frivolous" seems to have made Ram Singh alive to the inconvenient situation the charge was likely to put him in unless he could give some explanation of the documents and attempt to take them out of the ambit of those provisions. Therefore in reply to the interrogatories the explanation offered was that Kanhya Ram had been employed for party propaganda and not for election of Ram Singh himself that Lehna Singh had made payment to Kanhya Ram and in turn Ram Singh paid the amount to Lehna Singh and that this was payment for work done long before elections though the payment was in December, 1951.

9. The onus of proving this explanation was clearly on the respondent. It appears from the evidence that Ram Singh was seeking to stand for the election as a nominee of the Congress Party, he having been President of the Jind Tehsil Congress at that time. At the end of November, 1951 however his application for a Congress ticket was rejected and the petitioner was declared as the nominee of the Congress Party. In spite of this Ram Singh decided to remain in the election. He obtained from the Returning Officer the symbol of 'Hut' which had been assigned as the distinctive symbol to the K.M.P. Party, another recognised party in the elections. He does not however say that after rejection by the Congress Party he was adopted as candidate by the K.M.P. Party. He wants it to be believed that another non-descript party going under the name of 'Kisan' Party had then adopted him in December and that Lehna Singh as Secretary of that party had employed Kanhya Ram to do election propaganda on behalf of that party in the months of September and October, 1951 long before he (Ram Singh) was in the view of the party as a possible candidate and that when the party decided to adopt Ram Singh, Lehna Singh required him to pay this amount of Rs. 400 which the party had already spent by payment to Kanhya Ram for propaganda. So Ram Singh paid him in December and obtained Voucher No. 11 from him.

10. Kanhya Ram is by profession a preacher of Arya Samaj. His mode of preaching appears to be to go about and sing Bhajans to the accompaniment of harmonium which he himself plays and of tabla and Khartal for playing which he employs two other persons. The election propaganda for which he was paid Rs. 400 was done by him in this manner by attracting people by his music and then preaching to them.

11. The evidence produced by Ram Singh to prove his explanation of Kanhya Ram's employment consists of the testimony of his own brother Jai Singh R.W. 4 who calls himself President of the Kisan Party, of Kanhya Ram the preacher as R.W. 6, of Lehna Singh R.W. 8 styling himself as Secretary of the Party and of Ram Singh himself as R.W. 15. Without referring to their evidence in detail we may say at once that we have not been impressed by any of these persons as a truthful witness. In fact we are in doubt about the very existence of the so called Kisan Party. We have not been vouched any information about the other persons who are in that organisation except the above mentioned President and Secretary. No list of the members of the party is said to be maintained nor did the party

have any funds at any time and due to this happy circumstance it was not found necessary to keep any account books. This is the explanation offered of the absence of any kind of record pertaining to this party. Kanhya Ram's employment may have been arranged through Lehna Singh who was a worker of Ram Singh in connection with the election. He was undoubtedly proposed by Ram Singh for appointment as his polling agent (*vide* Ex. P. 16 and 17), though there may be controversy whether he actually worked as such or not. His appointment after the elections as an Inspector of Consolidation of Holdings in the Revenue Department in charge of the respondent Ram Singh as Minister was a reward for his help in the election. We will not be making an undeserved comment by calling all these persons as partisan witnesses. Kanhya Ram himself being under an obligation to Ram Singh for having received a large amount of Rs. 400 for his remuneration.

12. If we are to accept the evidence of these witnesses, it would mean that this Kisan Party without any following and without any funds had decided by the vote of Jai Singh the President and Lehna Singh the Secretary to do propaganda to decry the Congress organisation (which from its political stature would be presumed even in September to be likely to set up candidates for election) and to impress on the people that the Kisan Party (which never made even an attempt to secure its recognition for purposes of general elections) was doing more effective and useful work than the Congress and would be deserving of their support if and when in the coming elections it may decide to set up any candidates. That therefore this party in September, 1951, without having in view any candidates or any constituencies in which they could be set up, employed Kanhya Ram and kept him moving about with his band to preach against the Congress in Julana Constituency only in which the President's own brother wished to stand on Congress ticket and to sing the praises of Kisan Party with the foresight of a possible chance that some person may seek support for his election from this party after acceptance of his nomination in December. That Kanhya Ram was kept on the work for two months September and October on a promise of the remuneration Rs. 400/- at Rs. 200/- per month to be paid not monthly nor at the end of the term of employment but when money would come into the hands of the party through the liberality of some prospective candidate. That Kanhya Ram accepted employment on such doubtful promises of payment of remuneration in distant future and would even secure two other men to be in his company for this long period all the time living on their own resources with mere assurances from Kanhya Ram that they would be paid at Rs. 50 per month each when he himself may be lucky to be paid by the Kisan Party. That the Kisan Party saw its chance in December when the Congress Party having rejected Ram Singh, he applied to his brother and to Lehna Singh to give him the benefit of Kisan Party's name and they graciously decided to adopt this solitary applicant for the Party's ticket but not without putting him on terms of payment of Rs. 400/- for which the party was already committed to Kanhya Ram for this propaganda done two months earlier without Ram Singh's name being in any way associated with it or mentioned at the time. That Ram Singh readily accepted the terms and paid the amount hoping to be benefited in his election by the party's general propaganda done so far back. That Kanhya Ram could then be paid by the party in December after a long waiting of two months. That Lehna Singh ignoring all these facts regarding the time and period of Kanhya Ram's employment and of the person who was the actual employer, gave the receipt voucher No. 11 in terms showing that Ram Singh himself had employed Kanhya Ram in the month of December only for his own election propaganda and Ram Singh accepted this receipt as being necessary to evidence his expenses on election.

13. This is the sum total of the evidence given on behalf of Respondent No. 1 and the whole thing reads so fantastic and unpractical that we feel no hesitation in rejecting the evidence as untruthful. Even when all the above stated was said and done, Ram Singh found himself confronted with another position that having paid for the election propaganda though done by the Kisan Party he might be deemed to have employed Kanhya Ram himself through the party. With his resourcefulness he offered an explanation of this position also by stating that the party had asked him to pay the amount as a loan which he did but soon the office bearers played false and refused to pay back the amount or even to make any change in the terms of voucher No. 11 which negatives this story of loan. This again is as incredible as the remaining version of the respondent regarding Kanhya Ram's employment.

14. Lehna Singh was thought to be the writer of voucher No. 11 and as such was searchingly cross examined on his evidence so contrary to its recitals. He tried to get out of this apparently untenable position by explaining that the receipt was scribed by another man Dhoo Singh who was not called as witness.

This put the petitioner on suspicion that if the writer was not Lehna Singh he may be Ram Singh himself. The handwriting expert Shri K. S. Puri P.W. 23 was accordingly asked to examine the writing and compare it with the admitted writing of Ram Singh on sheet No. 28 of the Return. He has given evidence after such comparison that voucher No. 11 is in the handwriting of Ram Singh himself. The expert was not cross examined on this sworn opinion stated by him. But Ram Singh called another expert Shri S. S. Pahwa R.W. 16 who has referred to a few points of difference in the mode of writing of two common words of the admitted writing and this voucher No. 11 and has stated in opposition to Shri Puri's opinion that voucher No. 11 is not in the handwriting of Ram Singh. We do not think this opinion of Shri Pahwa can be acceptable. He has not taken into consideration the many points of similarity which have been pointed out by Shri Puri as establishing his opinion that the disputed writing is also of Ram Singh. In fact Shri Pahwa has admitted that there is so much agreement in the character of the two writings that he would consider the voucher No. 11 to be a very skilful forgery of Ram Singh's writing. We cannot imagine that Ram Singh had any reason to seek out another writer for voucher No. 11 who could write so similar to his own writing as to make a skilful forgery of his writing, nor that this could be a mere accident and can only infer that voucher No. 11 is in the handwriting of Ram Singh himself. This still more confirms us in our view that the evidence given on behalf of Ram Singh in opposition to the plain recitals of voucher No. 11 cannot be true. On the documents referred to coupled with the statements of P.W. 8, P.W. 9 and P.W. 22 that Kanhya Ram did propaganda for Ram Singh in December, we find that Kanhya Ram's employment was not by the Kisan Party but was by Ram Singh himself for canvassing support for his candidature as an independent candidate after his rejection by the Congress Party and so was in furtherance of the prospects of his election.

15. The petitioner contends that this amounts to a corrupt practice under Clause (7) of S. 123 of the Representation of the People Act. The process of reasoning by which he intended to show how the employment of Kanhya Ram on payment could be brought within that clause was indicated in the further particulars of the petition itself. Reference there is made to S. 77 of the Representation of the People Act, 1951 and to R. 118 read with schedule VI of the R.P. (Conduct of Elections and Election Petitions) Rules of 1951. S. 77 lays down:—

"The maximum scales of election expenses at elections and the numbers and description of persons who may be employed for payment in connection with election shall be such as may be prescribed."

The maximum election expenses are indicated in Schedule which is made part of rule 117. That rule reads:—

"No expense shall be incurred or authorised by a candidate or his election agent on account of or in respect of the conduct and management of an election in any one constituency in a state in excess of the maximum amount specified in respect of that constituency in schedule V."

Rule 118 provides:

"No person other than or in addition to those specified in schedule VI shall be employed for payment by a candidate or his election agent in connection with an election"

Schedule VI which is entitled "Persons who may be employed for payment by candidates or their election agents in connection with elections" specifies them under two heads (1) at all elections—three categories being specified and (2) at elections in which the method of voting by ballot boxes is followed—two other categories being specified in addition to those specified under the first.

16. Kanhya Ram's employment does not come under any of the categories as specified in schedule VI. The plain meaning of S. 77 read with Rule 118 and schedule VI appears to be that except for the persons specified in the schedule a candidate is not authorised to employ any other person for payment for any kind of work in connection with his election. This refers to direct employment and would not apply to indirect employment of persons—such as a printer of advertisements or election literature, who do the job for payment in the course of their usual business. Kanhya Ram's employment during the month when he did election propaganda for Ram Singh in return for Rs. 400/- paid to him was in our view employment for payment in connection with the election within the meaning of the provisions above referred to. We think it is now concluded by authority that the process of election so far as a candidate is concerned commences with the filing of his nomination paper. We refer to the decision of the Madhya Bharat High Court in A.I.R. 1952 M.B. 97 (Shankarrao Ramaji and another V State of Madhya Bharat) and

of the Supreme Court in A.I.R. 1952 Supreme Court 64 (N. P. Ponnuswami v. The Returning Officer Namakkal constituency). For any kind of work throughout this process of election which will end with the declaration of the result of the election employment of no persons would seem to be authorised for payment except those specified in schedule VI.

17. On behalf of the respondent it was argued that the two heads in schedule VI refer to "at elections" and this should mean that the persons specified are for employment from the commencement of the polls. It was also argued that it would be a great hardship if a candidate is not allowed to take assistance of other persons during the long period of preparation for the polls when so much work has to be done that one may not expect all persons to do it without payment in return. We do not think that by use of the phrase 'at elections' it was intended to specify persons to be employed for work from the commencement of the polls. One of the persons specified is 'election agent' who begins to function from the time the candidate's nomination is accepted and who is authorised to do the several acts and maintain account of election expenses as the candidate himself may be required to do. The title of schedule VI shows that the persons specified are those to be employed "in connection with the election" and the phrase "at elections" has not got any different connotation. We think that the two phrases are convertible and are intended to cover the whole period of election. For purposes of elegant diction they appear to have been employed by legislature alternately whenever there is occasion to refer to the same matter repeatedly in making a provision. We refer to the language of section 77 where the phrase 'at election' is used to indicate the range of election expenses which should be covered by the maximum amount as may be prescribed. This range is indicated by the words "on account of or in respect of the conduct and management of elections" indicating that the maximum is to cover all kinds of expenses in the entire process from the commencement of the election period which as we have said commence from the time the nomination is accepted. It cannot be argued that the maximum prescribed is only for expenses to be incurred from the time the polls commence. We do not find any ambiguity in the provisions above referred or any difficulty in interpreting them and this being so, the argument about hardship to the candidates to find persons to work without payment cannot be allowed to prevail. We find that Kanhiya Ram's employment which was for payment amounts to corrupt practice under clause (7) of S. 123 of the Representation of the People Act 1951.

18. *Issue II.*—The petitioner alleges commission of the 2nd corrupt practice by Ram Singh in making appointment of Ch. Mehtab Singh of village Igra as his polling agent at Bibipur polling station where he is stated to have so worked on the 7th and 8th January, 1952 which were the two days of polling at that place. The dates of polling in this constituency were 7th, 8th, 9th, 10th, 11th and 12th January and there were 9 polling stations—the dates of polling at each of these stations not being the same. A repoll had been ordered at three polling stations namely Lalit Khara, Zafargarh and Morahi but we are not concerned about the repoll because Mehtab Singh's employment is related to the poll at Bibipur. In the petition the petitioner referred to the appointment of another polling agent Ch. Molar at Zafargarh polling station. Zafargarh is the home village of the respondent Ram Singh. Objection to these two appointments was taken on the ground of the irregularity in allowing these persons to act though Ram Singh had failed to comply with the provision of sub-rule (2) of Rule 12 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1951. The sub-rule is:—

"(2) As soon as may be after the appointment of each polling agent of a candidate, and in any case at least three days before the commencement of the poll, the candidate or his election agent shall give notice of the appointment to the Returning Officer by forwarding to such officer the letter of appointment referred to in sub-rule (1)".

This letter of appointment according to sub-rule (1) is to be made out in duplicate in form 6 by the candidate or his election agent and under sub-rule (2) one copy is to be sent to the Returning Officer by way of notice and the 2nd copy on which the Returning Officer notes having received the duplicate is then handed over according to sub-rule (3) to the person appointed as polling agent to take it to the Presiding Officer of the polling station and the Presiding Officer after requiring the polling agent to sign the declaration on the form and after signing it himself, retains the form and allows the polling agent to act.

19. The contention of the petitioner was that though the Respondent had failed to send one copy of form 6 to the Returning Officer under sub-rule (2) within the time allowed, he sent the persons appointed to their respective polling stations with the other copy of the letter of appointment. The petitioner has stated that before making the petition he had come to know that Ram Singh had taken Ch. Molar to the Presiding Officer of his village Zafargarh and had induced that officer to accept him as polling agent in anticipation of Returning Officer's authority, and that his own polling agent Monohar Dass at Bibipur had told him that similarly the Presiding Officer had allowed Mehtab Singh to work at Bibipur without authority from the Returning Officer. Therefore before filing the petition, he applied to the Returning Officer for a copy of form 6 in respect of appointment of Mehtab Singh which should have been lodged with the officer under Rule 12(2) (*vide* his application dated 1-4-52 copy Ex.P-3). No copy was given and he was told that no such letter of appointment was traceable. He was thus convinced that these appointments had been made without observance of rule 12(2) and so he made that allegation in the petition presented on 5-4-1952. Though as already stated in para 4 his contention of irregularity of the appointments vitiating the election is not now pressed, the assertion that Mehtab Singh's assistance taken by Ram Singh by requiring him to act as polling agent at Bibipur amounts to corrupt practice as provided in clause (8) of S. 123 R.P. Act is not given up, but on the contrary has been pressed with all the emphasis, and Molar's appointment at Zafargarh at the first poll is relied on as evidence of circumstances material for proving Mehtab Singh's appointment at Bibipur.

20. Ch. Mehtab Singh was alleged to have been appointed by the State Government as a member of the Debt Conciliation Board constituted for the Pepsu State on a pay of Rs. 100/- p.m. and to have been holding that office at the time when he acted as polling agent of Ram Singh at Bibipur on the 7th and 8th January. His position as member of the Board was said to be that of a servant of the State Government and so the assistance taken from him as polling agent amounted to a corrupt practice hit by S. 123(8).

21. The allegations of this corrupt practice were made in para 9(B) of the petition and in Appendix B where all the necessary particulars were mentioned. When giving further and better particulars on 29-9-1952 these were repeated and a note was added that when the Returning Officer was asked for a copy of the letter of appointment of Mehtab Singh at Bibipur, he had declared it to be untraceable. The reply of Ram Singh to these allegations was that they were false and frivolous adding that no gentleman of the name of Ch. Mehtab Singh was appointed by him as polling agent. The allegations in para 12(b) and (c) of the petition where such appointments of polling agents were stated to have been made though against the provisions of rule 12 were simply denied. No reply was given whether Mehtab Singh of Igra was or was not a government servant. Though a number of interrogatories were delivered by the petitioner on this point, he could not elicit any further admission or explanation of these points nor did the respondent admit if he had made any efforts to appoint polling agents at any polling stations during the first poll.

22. The petitioner has pointed out that Ch. Mehtab Singh's village Igra was within the Julana constituency and not far from Bibipur and because of this circumstance he had considerable influence in the constituency and particularly in the area from which votes were to be polled at Bibipur; also he was for a number of years a Station officer of Police in Jind State and was appointed member of the Debt Conciliation Board for Pepsu which helped to enlarge his sphere of influence. All these facts which are undoubted were stated to explain why of all persons Ram Singh had chosen this 'gentleman' to be his polling agent at Bibipur. It was further said that not only he was allowed to and did act on the two days of the Poll but also while so acting was openly browbeating the voters. It is also pointed out that he has been rewarded for all this assistance by Ram Singh promoting him to be Chairman of the Debt Conciliation Board during his Revenue Ministership. While on the side of the petitioner all these facts were thus stressed to show how Mehtab Singh appeared indispensable to Ram Singh and how he had helped Ram Singh in election and Ram Singh in his turn had rewarded him for the assistance, on the side of the respondent it has been impressed on us that the evidence of denial of the appointment given by Mehtab Singh and by Ram Singh should by virtue of their positions be accepted as credible. We are not impressed and having seen them both before us in the witness-box, we think that whatever other considerations may have existed for giving them these preferments, love of truth as a strong point in their mental make up could not have been regarded as an essential. Mehtab Singh, as we shall presently discuss and show, did assist Ram Singh in the election and we think that he has continued his assistance in Ram Singh's efforts in maintaining the election by the defence of this petition. This assistance he has given

by appearing as witness for Ram Singh and avoiding to attend when the petitioner wanted him on his side. The dates first fixed for trial were 8th and 9th December for the witnesses of the petitioner and 10th December for respondent's witnesses. Petitioner got summons issued for Mehtab Singh's attendance for the 9th while the respondent cited him for the 10th. Both these summonses with separate subsistence allowance against each, were served on Mehtab Singh on 2-12-1952. He did not, however, attend on the 9th but appeared on the 10th and gave evidence for Respondent. The real reason for his avoiding attendance on the 9th will be referred to later. While on the point which we are making here we only say that the explanation which he has offered for failure to attend on the 9th when the petitioner wanted him is not only untruthful but audacious. He says that having received the two summonses on the same day, he thought that his attendance could be necessary on one day only i.e. the 10th and that the summons for the 9th was not to be acted upon. This explanation coming from a person who claims to have been a Station Officer of Police for many years and presumably well conversant with the procedure and practice of the courts, is only to be read to be disbelieved. His avoiding attendance on the 9th was, we have no doubt, deliberate and we think that the disrespect for law and the contempt of proceedings before us which he has thus shown may be ascribable to his having been a police officer in the small Jind State.

23. The best evidence about Mehtab Singh having acted as Polling Agent at Bibipur would have been the letter of his appointment in form 6 produced from the packet of "written authorities of candidates appointing their polling agents" received by the Returning Officer from Bibipur Polling Station. This has not been found in that packet which when received in the tribunal was found to contain letters of appointment of Manohar Das (P.W. 6) as polling agent of the petitioner and of Abhram (P.W.7) as polling agent of the respondent No. 3 Chander Singh. The petitioner's counsel has accounted for the absence of the letter of Mehtab Singh's appointment from the packet by an assertion that it has been removed therefrom while the packet was in the custody of the Returning Officer and this in order to help Ram Singh (at that time Revenue Minister in the State) in his defence of the petition. In the petition the petitioner relied on the letters of appointment of Mehtab Singh at Bibipur and Ch. Molar at Zafargarh and also paper seals of the ballot boxes. As soon as it was known to him that the petition was to be heard before this Tribunal, he made an application on 9-9-1952 for obtaining all the records from the Returning Officer, Sangrur mentioning particularly the above documents. At the first hearing on 16-9-1952 he again made an application that he wanted to have inspection of the records and to take copies in order to give better particulars, the right to give which was reserved in the petition, but that he could not get either inspection or copies because the Election Kanungo in charge of the records was not available at Sangrur. By another application of the same date, he alleged that Ch. Ram Singh had personally gone to Sangrur on the 12th September and was allowed inspection of the record and the petitioner also expressed his apprehension that the record might be tampered with or destroyed. To prove this inspection by Ram Singh he produced a copy of Ram Singh's application for inspection. The fact of inspection of the records on the 12th is admitted by Ram Singh now. The letter of appointment of Mehtab Singh not having been found when the record was produced before the Tribunal later, it has become necessary to determine upon a consideration of other evidence whether it must have existed or not. About the paper seals of the ballot boxes, on which the Polling Agents of the candidate are allowed to sign, it has been reported that they have not been preserved.

24. In the circumstances, the petitioner had to fall back upon the other available evidence. The respondent in the confidence of a feeling of security gained by his inspection of the records on the 12th September, that form of appointment of his polling agent at Bibipur would not be forthcoming, came out with a written statement denying categorically appointment of any polling agent at any polling station during the first poll and characterised the petitioner's assertion that appointments were made as "false and frivolous". To the searching interrogatories such as if he had intended to make appointments and for that purpose sent forms 6 to the Returning Officer though not in time, if he had persuaded the Presiding Officer to accept his polling agents on the assurance that the Returning Officer's authority may be obtained in due course and if in this way he had secured the acting of his polling agents contrary to rule 12 at least at the polling stations of Bibipur, Zafargarh, Lalit Khara and Lajawana Kalan, his replies were a definite 'No' with an addition in some places of 'I do not remember'.

25. These replies were made on 30-10-1952, and on 6-11-1952 the petitioner produced 9 forms Exhibits P-11 to P-19 being duplicates, over Ram Singh's own signatures of letters of appointment of his polling agents at the nine polling stations of the constituency. They are all dated 2-1-1952 being intended for the first poll which was scheduled to commence from 7th January at some polling stations and

at a later date in others. Ex. P-11 proposed appointment of Mehtab Singh at Bibl-pur, where the polling was to be on the 7th and 8th January, and Ex. P-12 was about the appointment of the same person at Kheranti where the polling was to commence on the 10th. Ex. P-13 was relating to appointment of Ch. Molar at Zafargarh, Ex. P-14 to that of Mangat Rai at Lajjawana Kalan and Ex. P-15 to the appointment of a polling agent at Lalit Khara (the polling at each of these three was to commence on the 7th), Ex. P-16 to that of Lehna Singh Doon at Karela where polling was to commence on the 11th January and Ex. P-17 to that of the same person at Shamlo Kalan where polling was to take place on 7th, 8th and 9th.

26. On being called upon to give statement about these 9 forms of appointment Ram Singh admitted in a statement by his counsel that all the 9 forms were signed by him that he had prepared several copies of such forms for sending them to the Presiding Officers of the different polling stations and that these 9 forms had been sent to the Returning Officer through a messenger but they were not delivered to that officer and on being brought back remained lying with him, and that two of the forms Ex. P-11 and P-12 though showing name of Mehtab Singh as polling agent were not intended for appointment of Mehtab Singh of Igra but of another Mehtab Singh of village Berah Kalan (Sunderpur) but as Mehtab Singh of Sunderpur did not turn up, the forms could not be signed by him and they were not made use of by presenting them to the Returning Officer or the Presiding Officer. It was thus stated that no Mehtab Singh was actually appointed and that this explained why the form of appointment of Mehtab Singh was not found in the packet sent by the Presiding Officer. About the other seven forms the counsel admitted that Ram Singh had made appointments of the polling agents named in them.

27. Even this statement did not explain as to who had signed Mehtab Singh's name on Ex. P-11 and P-12 in the place for 'Polling Agents' signature' if Mehtab Singh of Sunderpur did not sign. It stands to reason that Ram Singh himself must have completed these forms including the signature of the polling agent as he did in the other before sending them to the Returning Officer under Rule 12(2). He did not, however, want to disclose who had made the polling agent's signatures on these two forms. The handwriting Expert Mr. K. S. Puri has given his opinion on a comparison of the signatures of Mehtab Singh on Ex. P-11 and P-12 with the admitted signature of Ram Singh on Ex. P-13 that Ram Singh himself has written those signatures of Mehtab Singh. This shows that Ram Singh was so keen about Mehtab Singh's appointment and so sure that Mehtab Singh would not deny the signatures, that he himself signed Mehtab Singh's name to avoid delay in dispatching the forms to the Returning Officer. We have no doubt that he could be sure of both these things in respect of Mehtab Singh of Igra. But realizing now that such may be the inference if he admitted the opinion of the Handwriting Expert to be correct, in the witness-box he denied that he made Mehtab Singh's signatures on Ex. P-11 and P-12, and in his attempt to rule out the Expert's opinion though the Expert was not even cross-examined on it, he now wanted to deny the admitted signature with which comparison had been made. Thinking that it was his signature on Ex. P-14 with which the Expert had instituted the comparison he now denied his signature on Ex. P-14 though previously through counsel he had admitted all the nine signatures on Ex. P-11 to P-19. He also tried now to get over the difficulty of explaining how the incomplete forms would have been sent to the Returning Officer, by making a reckless statement that they were not in fact intended to be sent and were not sent but that they were only the nine forms out of hundreds of such forms which he was then writing in order to gain practice of filling in such forms. No further comment is necessary to show that Ram Singh has no scruples about making any statements at any time to serve his one object of trying somehow to explain the evidence of the other side which he finds tends to prove any point against him. In attempting this absurd explanation, he has not shown how these particular 9 forms relating to appointments at the 9 polling stations could have gone from his custody into the hands of the petitioner to enable him to produce them here.

28. The petitioner states that these were given to him by Shri Inder Singh Malik P.W. 12 and this witness in his evidence has explained how the forms came in his possession. Inder Singh and Ram Singh were both brother lawyers practising at Jind and they were both contesting elections though from different constituencies in the same district—the Returning Officer for both being the same. They were helping each other in connection with the election. He was going to send his forms of appointment of Polling Agents through his man and Ram Singh desired his own forms to be sent through the same man. These 9 forms were accordingly handed over to Inder Singh's man Ratiram at Inder Singh's house. Ratiram was, however, late in reaching the Returning Officer and the forms were not accepted as they had not arrived at least three days before the commencement of the polls as

required by the rule. Ratiram, therefore, brought them back and left them with Inder Singh. Thus they remained lying with him and he made them over to the petitioner for making them evidence in this case. We think this explanation should be acceptable particularly when Ram Singh is unable to offer any different explanation which would be convincing. Inder Singh states that Ram Singh had in Ex. P-11 and P-12 intended to make appointment of Mehtab Singh of Igra.

29. The fact that the forms Ex. P-11 and P-12 do not in fact bear signatures of Mehtab Singh of Igra will not necessarily show that this Mehtab Singh was not sent to Bibipur and could not have acted there. Mehtab Singh of Sunderpur R.W. 10 had given his refusal to work as Polling Agent of Ram Singh because he had agreed to work in another constituency where his village lies for a candidate Des Raj. It is not suggested that Des Raj had also waited till the last hour like Ram Singh in sending forms to the Returning Officer, and in this way when Ram Singh was aware that Mehtab Singh of Sunderpur was not available, he could not have intended his appointment in Ex. P-11 and P-12. He being a man of a distant village from Julana constituency could not be quite useful to Ram Singh as polling agent for Bibipur, and we have no doubt as Inder Singh has stated that Ram Singh had sent the forms Ex. P-11 and P-12 for appointment of Mehtab Singh of Igra.

30. Though Ram Singh would not admit it in the pleadings, it is proved now that even without lodging the forms with the Returning Officer and getting his permission, he sent his polling agents with duplicates of such forms to the polling stations where the polls were commencing on the 7th January and induced the Presiding Officers to accept his polling agents in anticipation of Returning Officer's authorisation. At Zafargarh Molar Singh was thus sent with a duplicate of Ex. P-13 and this has been found in the packet of that polling station with signature of Molar Singh to the declaration and the Presiding Officer's signature under date 7th January 1952 showing that Molar was allowed to work as Polling Agent there. The paper bears a note of the Presiding Officer under date 8th January 1952 "cancelled not being in proper order". The Presiding Officer in his list of polling agents who worked at that polling station which he sent with these forms showed the name of this Molar Singh also. All this definitely shows that Molar was allowed to act on the 7th because of assurance given that authorisation from the Returning Officer would be coming, but when it did not come in the course of that day, the Presiding Officer refused to permit him to act as such on the 8th. Zafargarh being the home village of Ram Singh, he had perhaps taken Molar with him to the Presiding Officer which will explain why he did not endorse on the form in his writing a request to the Presiding Officer to allow the Polling Agent to act in anticipation of authorisation as he did on some other forms. In the witness-box in answer to the question if he had himself taken Molar to the Presiding Officer, his reply was the usual evasive one "I do not remember".

31. At Lajwana Kalan Mangat Rai was sent with a duplicate of Ex. P-14 bearing a written endorsement of Ram Singh requesting that the man may be allowed to work in anticipation of authorisation. The Presiding Officer allowed Mangat Rai to act on the 7th January after endorsing on the paper "Accepted only for 7th January 1952 in the expectation that the endorsement might arrive by the 8th". It appears from the other papers in the packet of that polling station that another candidate Chander Dutt taking advantage of this concession shown to Ram Singh, desired to push in one Chet Ram as his polling agent with a form filled up there and then, endorsing it just in the way Ram Singh had done and requesting permission for the man to act in anticipation of authorisation. This the Presiding Officer rejected with an order "Rejected because R.O.'s endorsement is not there and the appointment was not made three days before the actual polling." It is possible that when the Presiding Officer thus found that another candidate also wanted to be shown the same latitude as he had shown to Ram Singh, he decided to turn away Mangat Rai also the same day and actually Mangat Rai was not allowed to work throughout the day on the 7th. This, however, confirms that Ram Singh made all efforts to put in his polling agents on the 7th though there was no authorisation and the Presiding Officers where they were not faced with an objection by other candidates were willing to accept his polling agents for a day at least in anticipation of sanction. This position in respect of the Presiding Officer of Lajwana is admitted now by Ram Singh also in the witness-box.

32. At Lalit Khara one Satyadev attended with a form No. 6 signed by Ram Singh and bearing date 2nd January 1952 and the Presiding Officer appears to have accepted this Polling Agent of Ram Singh without any scrutiny of the duplicate for authorisation. The form presented there is not an exact duplicate of Ex. P-15 in which the name given is Swami Purnanand. Perhaps Purnanand was not available on the 7th and therefore Ram Singh wrote out a form bearing the same date 2nd January 1952 and gave it to Satyadev who used it and was allowed

to act on its basis. The explanation which Ram Singh has to offer of this appointment in his evidence is:

"I had not proposed any appointment but simply signed form No. 6 in blank for being filled in by any of my workers whom I had sent at Lalit Khara polling station. This form seems to have been taken by some Satyadev, who is not known to me, and he presented it before the Presiding Officer there. I can give no explanation how the form went out of my hands and reached the Presiding Officer."

Though Ram Singh finds difficult in explaining it, we see no difficulty in inferring that he was so keen on having his polling agents at all the stations that without authorisation he tried to install them in the polling stations and where the persons previously proposed for appointment were not available he even pushed in new men on freshly filled in forms bearing an anterior date.

33. It is possible that similar attempt was made at Shamlo Kalan, Julana and Morkhi where also the polls commenced on the 7th but it did not succeed because the Presiding Officers there were more strict. Lehna Singh admits that he had agreed to his appointment at Shamlo Kalan and also at Karela but could not act for want of authorisation. For Julana the proposed polling agent was Ram Singh's brother, Jalpal Singh. We have no evidence whether these persons made any attempt for their acceptance at the respective polling stations and so will not infer anything against Ram Singh from the circumstance that he had proposed his enthusiastic workers for the appointments there. According to the petitioner the position at Bibipur was different from these polling stations. Here the Presiding Officer was more accommodating and it is said that he allowed Mehtab Singh to act on both the days of the poll. This being the first general election in Pepsu, the election law was imperfectly understood by the people here. Though according to the petitioner, his polling agent Manohar Singh had brought to his notice that Mehtab Singh was allowed by the Presiding Officer to act though not properly authorised, he did not think then that he could do anything in the matter. As for the objection to Mehtab Singh on the ground of his appointment being a corrupt practice, Ghazi Ram petitioner explains that he did not then know that such was the law. He came to know of it when he took advice about filing the election petition. This ignorance of the law seems to have been general at that time and neither Ram Singh nor Mehtab Singh asserts that it was known to them then. And even if these persons knew it, the view which Mehtab Singh has propounded as witness that he does not regard himself as government servant because the remuneration which he draws is not now styled as 'pay' but 'honorarium', must have satisfied them that there was no bar to Mehtab Singh assisting Ram Singh as polling agent. If as we find in Ex. P.11 and P.12 it was Mehtab Singh of Igra, who was intended to be appointed, then there was a stronger reason for Ram Singh to see him installed as polling agent at Bibipur than he had for Molar to be at Zafargarh, Mangat Rai at Rajwana Kalan or Satyadev at Lalit Khara. Mehtab Singh as we have already stated commanded influence in the area of Bibipur polling station, and on the 7th January the voters from his own village Igra were to come to the polls. The circumstances would thus point to Ram Singh's greater anxiety for having a polling agent at Bibipur and to a desire to have this Mehtab Singh if possible, and there is no denying that he was available. The petitioner explains that like the three other polling stations a duplicate of Form 6 for this Mehtab Singh's appointment was presented to the Presiding Officer at Bibipur also, and if it is not to be found in the packet of that polling station, Ram Singh's inspection of the records on the 12th September did the trick.

34. To fill up the gap of the absence of this document, the petitioner called in evidence all the persons who could be in the best position to state if any polling agent did in fact work for Ram Singh and who he was. The Presiding Officer and the four polling officers on duty and two other polling agents who were in the polling station have all been examined. In approaching their evidence we cannot keep out of view the fact that so far as the government servants are concerned, they were in an embarrassing situation when required to appear in evidence against the respondent in the position of a Cabinet Minister.

35. Prof. R. D. Sharma of the Government College, Sangrur, who was the Presiding Officer was called as the first witness when the trial opened on the 8th December. He first stated that Ram Singh had a polling agent but immediately wanted to take shelter behind his memory failing him unless refreshed by the letter of appointment. That of course was not forthcoming, and Mehtab Singh who could have been shown to the witness was not available because the petitioner had inadvertently taken out summons for his attendance on the 9th. The witness was, therefore, ordered to attend the next day for further examination. Mehtab

Singh however did not attend on the 9th. We have already given our opinion about his explanation of this failure to appear on the 9th. We have no doubt that he knowingly absented himself in order to help the respondent in his defence by making it impossible for the petitioner to point him out to the witnesses and get their evidence after his identification. The petitioner's other witnesses on this point were examined on the 8th, and though some of them tried to give statements in a halting manner, on the whole their evidence tended to make out convincingly that Ram Singh did have a polling agent. Prof. Sharma, coming to give evidence again on the 9th after the Tribunal had gained impression from the other evidence, evidently realized that he could not any more suppress the truth without damaging his character in the eyes of the tribunal, and therefore with somewhat reluctance stated that Ram Singh did have a polling agent on both the days, and since he had allowed the man to work, the letter of appointment for him must have been produced before him. About the identity of that polling agent, he still left the matter vague taking advantage of the fact that Mehtab Singh was keeping back and the witness could not be required to identify him.

36. Phool Chand P.W. 2 one of the polling officers was quite forthright in his evidence. He stated that Mehtab Singh of Igra had attended and worked as polling agent on both the days and had not only produced Form 6 and signed the declaration before the Presiding Officer but had also put his signatures on the paper seals of the ballot boxes. Because these documents are not now forthcoming through no fault of the petitioner, the witness cannot be discredited on his evidence. Nor do we think that we should be justified in doubting his evidence because his home village is the same as the petitioner's. Des Raj P.W.3 another polling agent admitted having seen Mehtab Singh on both days in the polling station but showed his hesitation in admitting that he was there as polling agent of Ram Singh. The reason for his hesitation we do understand, but still his evidence as far as it goes corroborates the other evidence about Mehtab Singh having acted for Ram Singh on both days. Nathu Ram P.W.4 the third polling officer also proved the presence of Mehtab Singh on both the days, and though he would not directly state that he was polling agent, he indirectly conveyed it by stating that on both days when the Presiding Officer called up the polling agents to witness the sealing of the ballot boxes, Mehtab Singh came in to see this on both the days. His presence on the two days for such purpose is not to be explained by the fact that he was himself a voter and had to cast his vote at Bibipur. Daulat Ram P.W.5 the fourth polling officer made no secret of the fact that he was unwilling to give evidence, though evidently he knew the facts too well.

37. Manohar Dass P.W. 6, the Polling Agent of Ghasi Ram and Abhe Ram P.W. 7, Polling Agent of Chander Singh have stated that Mehtab Singh was working as Ram Singh's polling agent on both days, that he had produced his letter of appointment as they had produced theirs and that all three of them had signed the paper seals on both the days.

38. The respondent obviously felt the weight of this evidence going against him and tried to meet it half way by statement of Mehtab Singh as R.W. 5 that he was at the polling station not on two days but only on the first and on that day he was there not during all the hours of polling but for only three hours. A witness Lal Chand R.W. 14 was produced to bear this out in the attempt to convince us that it was true. Even the three hours stay was rather long if a man went only to cast his vote, and it was apparently felt that an inference might be made that the long stay was for assisting Ram Singh in other ways if not as polling agent. Mehtab Singh came out with an explanation that he had to stand in a long queue with a number of women voters who were given precedence and so he needed all this long waiting to get his voting papers and to put them in the ballot boxes. We admire the resourcefulness shown in inventing the explanation but do not feel convinced of its truth.

39. We do not think we can be justified in doubting the oral evidence on the side of the petitioner and ignoring it only because the letter of appointment of Mehtab Singh was not found in the packet of Bibipur Polling Station. This will mean that we should be prepared to conceive that the whole story about this Mehtab Singh's appointment as polling agent has been built up by the petitioner from mere imagination without any basis for it, when there was not any polling agent of Ram Singh at Bibipur at all and still the petitioner could find available so much evidence of the documents of the respondent's own making and so many circumstances of his own creation and so many witnesses about whom it cannot be said that they could be interested in supporting a concocted story of the petitioner but who, if some of them gave evidence in a halting manner, did it

because they found themselves trapped between their conscience and the respondent's influence over their secular interests. We cannot think that the story was a mere fiction and that still the respondent found difficulty in frankly admitting all the documents and circumstances and when forced to admit them as they came to be proved, found himself at a loss to offer any adequate explanation of them, which would satisfy us and enable us to view them as not lending any support to the petitioner's story. We feel driven to the conclusion that the appointment of Mehtab Singh of Igra by Ram Singh as polling agent at Bibipur and his working as such on two days are facts proved beyond all doubt.

40. With this finding there remains no difficulty in recording our opinion about commission of the major corrupt practice defined in clause (8) of Section 123 of the Representation of the People Act 1951. The petitioner has quoted the Pepsu Government Notification about appointment of this gentleman as member of the Debt Conciliation Board with a pay of Rs. 100 p.m., and it is conceded that Mehtab Singh was in this position during the elections. The respondent's learned counsel did not argue that this did not make Mehtab Singh a servant of the State Government, but frankly stated that he could not make anything of the subtle distinction which Mehtab Singh has adumbrated between his remuneration described as 'pay' in the notification and 'honorarium' as he would himself style it. The crux of this provision of corrupt practice is to prevent a candidate from taking advantage of the influence which a government servant by reason of his position is supposed to have with the people. It cannot be gainsaid that a member of Debt Conciliation Board can have considerable influence with the rural population of the area within his jurisdiction. When the Government has appointed a person to be member of the Board and pays him for working as such, he cannot be anything other than a servant of the government by whatever name one may refer to the emoluments. Further looking to the duties of a polling agent which are primarily to safeguard the interests of his candidate in the election, there cannot be any doubt that the assistance given by a polling agent is in furtherance of the prospects of the candidates election. We, therefore, find on issue II that the corrupt practice under Section 123 (8) of the Representation of People Act is established in this case.

41. *Issue III.*—The third corrupt practice alleged is the use of motor vehicles for conveyance of voters to or from the polling stations which is prohibited by clause (6) of S. 123 of the Representation of the People Act. The petitioner's case on this point rests mainly on the voucher No. 6 attached to the respondent's return of election expenses. This is a receipt for Rs. 400, dated 3rd January 1952 'for lorry fare in election', given by M. S. Jain and sons of Rohtak. Mittar Sain, proprietor of this business giving evidence as P.W. 14 stated that the lorry No. DLB 1444 was hired for use in the 1st and 2nd weeks of January and that he had sent a driver named Baru with the vehicle. The particulars stated in Appendix 'C' of the petition read as though the petitioner's case was that a number of vehicles had been hired by Ram Singh for carrying voters to the polling stations of Zafargarh, Lahit Khara, Morkhi and Shamlo Kalan. The registration numbers of these vehicles were not given. It was added that this fact was brought to the notice of the Presiding Officer of these polling stations and one motor vehicle was seized by the Police at Shamlo Kalan. The respondent characterised these allegations as untrue and baseless and denied that any motor vehicle was used for carrying voters. In the petition or in the interrogatories delivered to the respondent there was no reference to this voucher in the return of election expenses. It was referred to for the first time in the evidence of Mittar Sain and then the respondent seemed to explain that Mittar Sain's vehicle was hired not for carrying voters but for taking him and his workers to the different villages for propaganda before the dates of polling.

42. The petitioner stated in the witness box as P.W. 22 that when he had noticed the lorry carrying voters he had made a note of its registration number in his diary. He did not, however give any number in the pleadings and allowed the space where it was to be mentioned to remain blank. This omission makes us think that Ghasi Ram's statement about seeing a vehicle carrying voters and noting its number cannot be acceptable as truth. No attempt was made to prove the seizure of any vehicle by police as stated in the petition. If this were shown, it could have easily fixed the date of use of the vehicle and the seizure would have been the best evidence to prove the objectionable use of the vehicle. Thus the best evidence which according to the petitioner himself had existed, has not been produced.

43. Mittar Sain did not mention in the voucher the dates for which the vehicle was hired. He stated that he was maintaining a register in which the dates were entered but he was not called with the register and this lacuna in the evidence

remains. Nothing can be inferred from the date of payment of hire 3rd January 1952 whether the vehicle was used before that date or after it. Baru Ram the motor driver of Mittar Sain as P.W. 15 no doubt states that the lorry was used during polling days for carrying voters. He mentions only Zafargarh and Shamlo as the two polling stations to which voters were taken according to his recollection. The names of the villages from where the voters were thus taken according to him would only account for two days user of the vehicle. His evidence thus fails to make out user for 8 or 10 days for which according to Mittar Sain the vehicle was hired. Moreover Baru Ram says nothing about seizure of the vehicle at Shamlo Kalan by the police as the petitioner had alleged. Mittar Sain himself does not know for what purpose the vehicle was hired and the word 'election' used in the voucher cannot be interpreted to mean that it was for carrying voters. The evidence is thus rather unsatisfactory, and we do not feel disposed to rely upon it to find that the motor vehicle hired from Mittar Sain was used for carrying voters. We accordingly find that the commission of any corrupt practice under clause (6) of Section 125, of the Representation of the People Act is not established.

44. *Issues VIII and IX.*—By our findings on issues I and II we have found that commission by the respondent Ram Singh of major corrupt practices under clauses (7) and (8) of S. 123, the Representation of the People Act is established. According to sub-section (2)(b) of S. 100 of that Act this finding result in a declaration that the election of the returned candidate is void without any necessity of showing that the result of the election has been materially affected by the corrupt practices. In the result, therefore, we make an order under S. 98 declaring that the election of Ch. Ram Singh Respondent No. 1 from the Julana Constituency of the Pepsu Legislative Assembly is void. Under S. 99 (1)(a)(i) we record the finding that Ch. Ram Singh as candidate committed the corrupt practices falling under clauses (7) and (8) of S. 123 of the Representation of the People Act, 1951, which shall entail his disqualification under S. 140 (Ibid). We do not propose to name any other persons under clause (a)(ii) of S. 99(1) in connection with these corrupt practices for disqualification under S. 141 to 143. The petitioner has failed to prove some issues which were minor. We, therefore, do not award him the full costs. The main contentions being however proved, we think it fair to award the petitioner $\frac{2}{3}$ of the costs incurred by him including Rs. 400 for pleader's fee, if certified, (amounting to Rs. 443 as scheduled below) against the Respondent No. 1. Other costs will be borne by the parties as incurred.

SCHEDULE OF COSTS

Petitioner Sh. Chasi Ram,		Respondent No. I Ch. Ram Singh	
	Rs. A. P.		Rs. A. P.
1. Stamp for power of attorney and applications	6 2 0	1. Stamp for power of attorney and applications	6 2 0
2. Stamp for process fee	19 0 0	2. Stamp for process fee	4 0 0
3. Subsistence for witnesses	165 8 0	3. Subsistence for witnesses	77 10 0
4. Pleader's fee Certificate filed for Rs. 1,000 but allowed.	400 0 0	4. Pleader's fee (No certificate filed).	
TOTAL	590 10 0	TOTAL	87 12 0

$\frac{2}{3}$ th of the above to be paid by respondent No. 1. Rs. 443/-/-.

(Sd.) V. B. SARWATE, *Chairman.*

(Sd.) E. M. JOSHI, *Member.*

(Sd.) RAGHUNANDAN SARAN, *Member.*

The 18th February, 1953.

[No. 19/100/52/Elec-III.]

S.R.O. 362.—WHEREAS the election of Shri Jamuna Prasad Tripathi, as a member of the Legislative Assembly of the State of Bihar from the Kanti constituency of that Assembly has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951) by Shri Nagendra Prasad Singh S/o Shri Munideo Singh, Village Chainpur, Pargana Bishara, P. S. Kanti, P.O. Raksa, District Muzaffarpur;

AND WHEREAS the Election Tribunal appointed by the Election Commission in pursuance of the provisions of Section 86 of the said Act for the trial of the said petition has, in pursuance of the provisions contained in Section 103 of the said Act, sent a copy of its Order on the said Election Petition;

NOW, THEREFORE, in pursuance of the provisions of Section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

ELECTION TRIBUNAL, PATNA

PRESENT:

Shri Basu Prasad, retired District Judge—*Chairman*.

Shri Hargobind Prasad Sinha, retired District Judge—*Member*.

Shri Aditya Narain Lal, Advocate—*Member*.

ELECTION PETITION No. 107 OF 1952

In the matter of election to the Bihar State Legislative Assembly from the Kanti Constituency in the district of Muzaffarpur.

Shri Nagendra Prasad Singh, son of Shri Munideo Singh, by caste Rajput, resident of village Chainpur, Pargana Bishara, P. S. Kanti, P.O. Raksa, district Muzaffarpur—*Petitioner*.

Versus

RESPONDENTS:

1. Shri Jamuna Prasad Tripathi, son of Shri Jagdeo Tewary, by caste Bhumihar Brahmin, resident of village Bagahi, Tollah Kapsarpura, Pargana Bishara, P. S. Kanti, P.O. Muzaffarpur.

2. Shri Ram Jiwan Sharma, son of Shri Lekh Narayan Singh, by caste Bhumihar Brahmin, resident of village Maruwan Bhoj, Pargana Bishara, P. S. Kanti, P.O. Marwan, district Muzaffarpur.

3. Shri Jogendra Prasad Sharma, son of Shri Ragho Prasad Sharma, by caste Bhumihar Brahmin, resident of village Bhatauna, Pargana Bishara, P. S. Kanti, P.O. Marwan, district Muzaffarpur.

For the Petitioner:—Mr. Brajeshwar Prasad Sinha and Mr. S. C. Mukerji
—*Advocates*.

For the Respondent No. 1:—Mr. Lal Narain Singh and Mr. B. P. Samaiyar,
—*Advocates*.

Shri Nagendra Prasad Singh, one of the candidates for election to the Bihar State Legislative Assembly from the Kanti Constituency in the district of Muzaffarpur, has filed this election petition under Sections 80 and 81 of the Representation of the People Act, 1951, calling in question the election of Shri Jamuna Prasad Tripathi (Respondent No. 1) and seeking a declaration that the petitioner has been duly elected, or in the alternative, seeking a declaration that the election from the said constituency is wholly void.

The petitioner states that he and the three respondents were candidates nominated for election to the Bihar State Legislative Assembly from the Kanti Constituency; that, subsequently, the respondent No. 3, who was set up by the Kisan Mazdoor Praja Party, withdrew his candidature and only three candidates, namely, (i) the petitioner, who was set up by the Socialist Party, (ii) the respondent No. 1, who was a candidate on behalf of the Congress Party, and (iii) the respondent No. 2, who was an independent candidate, contested the election; that elections were held at several polling stations in the said constituency between 4th January 1952 and 21st January 1952; that the respondent No. 1 was declared elected, having secured 10,783 votes, whereas the rival candidates, namely, the petitioner and the respondent No. 2, secured 7,734 votes and 704 votes respectively.

It is alleged by the petitioner that the respondent No. 1 was disqualified for being chosen as a member of the Legislative Assembly of the State of Bihar under Section 7(d) of the Representation of the People Act, 1951, in as much as

he had interest in a contract for execution of a minor irrigation work which his brother, Tulsi Prasad Tripathi, had taken from the Government of Bihar. Jamuna Prasad Tripathi (respondent No. 1), his two brothers, Tulsi Prasad Tripathi and Lakhendra Prasad Tripathi, and their father, Jagdeo Tewari, constituted a Mitakshara Joint Hindu family and the contract was taken by Tulsi Prasad on behalf of the joint family. It is also alleged that the respondent No. 1 was, further, disqualified under Section 7(a) of the Representation of the People Act, 1951 inasmuch as he was, in a previous District Board Election case, held to have been guilty of corrupt and illegal practices. This ground was, however, not pressed at the trial.

It is said that, at the time of scrutiny of nomination papers, objection to the validity of the nomination of the respondent No. 1 was raised by the respondent No. 3, but the objection was, it is contended, wrongly overruled and the nomination improperly accepted by the Returning Officer. It is urged that the result of the election has been materially affected by the improper acceptance of the nomination of the respondent No. 1.

It is, next, alleged by the petitioner that the election of the respondent No. 1 has been procured and induced, and the result of the election has been materially affected, by corrupt and illegal practices committed by the respondent No. 1 and his agents and his party members with the knowledge and connivance of the respondent No. 1. It is contended that the result of the election has also been materially affected by improper reception of votes and by reception of void votes and also by reason of non-compliance with the provisions of the Representation of the People Act and of the Rules made thereunder. It is said that on 4th January 1952 it was found at Sirsia Polling Booth that the frontal symbol attached to the petitioner's box was lying on the ground and as a result of which polling for about half an hour went on against the rules and several voters were misled on account of the absence of the symbol on the box.

The election petition is accompanied by a list of particulars of corrupt and illegal practices said to have been committed by or on behalf of the respondent No. 1. We shall refer to the list while dealing with the evidence on the question of corrupt and illegal practices.

The election petition is resisted by the respondent No. 1 who has filed a written statement contending that he was not disqualified as alleged by the petitioner. He asserts that he has been separate in mess and property from his brothers and his father from long before the election and that he had no interest in the alleged contract in the name of Tulsi Prasad. He contends that Tulsi Prasad did not enter into the contract for execution of the minor irrigation work on behalf of the joint family and that no such contract was in existence on the relevant date, namely, on the date when the nomination paper was filed by him. He maintains that his nomination was rightly accepted as valid by the Returning Officer. He denies the various allegations of the petitioner regarding corrupt and illegal practices, improper reception of votes and reception of void votes at the election and non-compliance with the provisions of the Representation of the People Act, 1951, and of the rules made thereunder at the election.

The following issues arise for determination

Issues

1. Was respondent No. 1 disqualified for being chosen as a member of the State Legislative Assembly?

2. Has the nomination of respondent No. 1 been improperly accepted? If so, has the result of the election been materially affected by such improper acceptance?

3. Has the election of respondent No. 1 been procured and induced by corrupt and illegal practices alleged to have been committed by respondent No. 1 and by his agents and party members with his knowledge and connivance?

4. Has the election of Respondent No. 1 been procured or abetted by or with the assistance of persons serving under the Government of the State?

5. Have there been any improper reception of votes and reception of void votes at the election? Has there been any non-compliance with the provisions of the Representation of the People Act and the rules made thereunder and other rules relating to the election? If so, has the result of the election been materially affected by such things?

6. Is the election in the Constituency in question wholly void?

7. Is the election of respondent No. 1 liable to be set aside?
8. Is the petitioner entitled to a declaration that he has been duly elected?
9. To what relief, if any, is the petitioner entitled?

Findings

Issue No. 1.—The ground of disqualification of the respondent No. 1 for being chosen as a member of the State Legislative Assembly, as urged by the petitioner, is the ground covered by section 7(d) of the Representation of the People Act, 1951. The ground may be stated in the following terms: The joint family of the respondent No. 1 had taken a contract from the Government of Bihar in the name of Tulsi Prasad Tripathi, one of its members, for execution of a minor irrigation work.

It is alleged by the petitioner that Jamuna Prasad Tripathi (respondent No. 1), his two brothers, Tulsi Prasad Tripathi and Lakhendra Prasad Tripathi, and their father, Jagdeo Tewari, are members of a Mitakshara Joint Hindu family. This allegation has been denied by the respondent No. 1 who has pleaded that he separated from his brothers and father in mess and property long before the election in question. Jamuna Prasad Tripathi (R.W. 17) has stated in his evidence that he separated in mess 20 or 21 years ago and that properties were partitioned 13 or 14 years ago. There is a presumption of jointness of a Hindu family and the onus to prove separation lies on the party alleging it.

Let us, therefore, examine the evidence produced by the respondent No. 1 to prove separation. There is no document showing partition of properties among the three brothers and the father. The oral evidence of partition is unsatisfactory and unconvincing. Tulsi Prasad Tripathi (R.W. 16) has said in his evidence that by partition he got 14 or 15 bighas of land, Jamuna Babu 14 or 15 bighas and Lakhendra Babu and Jagdeo Babu 21 or 22 bighas. It is said that Jagdeo Babu and Lakhendra Babu remained joint. It is indeed surprising that, as stated by R.W. 16 no paper was written or consulted in respect of division of joint properties, that no panch was appointed for making the division, and that no body went to the fields in connection with the division. From the evidence of Tulsi Prasad it appears that he gets separate receipts for the lands held by him. Such receipts, or landlords' papers showing payment of rent by 3 brothers separately, have not been produced. The evidence of Tulsi Prasad and Jamuna Prasad discloses that they acquired some lands after the alleged separation. Documents showing such acquisition have not been produced. Other documents which might have thrown light in the matter have also been withheld. In short, the respondent No. 1 has failed to prove partition of joint properties.

Mr. Lal Narain Singh has argued for the respondent No. 1 that in law there was severance of the joint status by reason of the fact that Jamuna Prasad stated in his previous deposition in the District Board Election Case, made on 16th June 1949 "I am separate from father and brothers. I am a Congress worker since 1922. When I used to go to jail and used to be fined often, the police used to attach family property, so I had to separate from the rest of the family" (*vide* Ex. M.) The learned advocate, relying upon 43 Indian Appeals 151 and A.I.R. 1948 Patna 215, has argued that the fact brought out by the above deposition is that Jamuna Prasad, at any rate, expressed his desire to sever himself from others on 16th June 1949 and there was severance of joint status on that date. The Privy Council Case reported in 43 Indian Appeals 151 lays down that once a member of a joint Hindu family governed by the Mitakshara has clearly and unequivocally intimated to his co-shares his desire to sever himself from the joint family, there is an immediate severance of the joint status. Their lordships of the Patna High Court, relying upon the above Privy Council case, held in A.I.R. 1943 Patna 215 that, in order to effect a separation in estate it was necessary that one of the co-parceners should clearly and unequivocally intimate to the other co-parceners his desire to sever himself from the others and that the consent of the other co-parceners was wholly immaterial. It was observed that the filing by a co-parcener of a written statement in a suit in which the other co-parceners were parties, pleading separation, amounted at least to giving notice to the other co-parceners that he desired to sever the joint status. It has not been shown in the present case that the brothers and the father of Jamuna Prasad were also parties in the District Board Election case and so it cannot be claimed that the statement of Jamuna Prasad in Ex. M, referred to above amounted to giving notice to his brothers and father that he desired severance of the joint status. In the absence of such intimation, the statement in Ex. M did not effect a separation in estate.

The respondent No. 1 relies upon certain Chaukidari papers, namely, Assessment registers (Exts. B to B2 and H to H9), Collection Registers (Exts. 1 to 17) and counterfoill receipt books (Exts. J to J8), for the purpose of showing that in 1938-39 Jagdeo Tewari and Jamuna Prasad were assessed with Chaukidari tax separately and that Jagdeo Tewari, Jamuna Prasad and Tulsi Prasad have been paying chaukidari tax separately since 1941-42. Jagannath Chaudhury (R.W. 7), President of the Union Board in 1938-39, and Hem Narain Singh (R.W. 15), Chaukidar Moharir, who has written Exts. H, 1 and J series, have given evidence for the respondent. Jagannath Chaudhury and Hem Narain Singh appear to be deeply interested witnesses and their evidence is not worthy of reliance. Tulsi Prasad is President of the Union Board for about 14 years. Hem Narain Singh owes his appointment to the post of Chaukidari Moharir to Tulsi Prasad and his office is held at the latter's house. The Chaukidari papers referred to above do not appear to be above suspicion. At any rate, these documents are not conclusive to prove separation in estate. In this state of evidence, it is difficult for the Tribunal to hold that the presumption of jointness has been rebutted and we, therefore, find that the family of Jamuna Prasad is joint.

The next question for consideration is whether the joint family of Jamuna Prasad had any share or interest in the contract for the execution of the minor irrigation work at Kaparpura. It appears that some residents of Kaparpura presented an application dated 21st March 1949 (Ex. Y) to the Collector of Muzaffarpur, through the District Congress Committee, Muzaffarpur, for repairs of a tank in their village which was the source of irrigation of a considerable quantity of land. Subsequently, a Panchait consisting of 5 persons with Tulsi Prasad Tripathi as headman was formed for the purpose of carrying out the scheme (*vide* Ex. Z). Tulsi Prasad Tripathi, as headman of the Panchait, executed an agreement (Ex. 5) which was accepted by the Collector on 28th April 1949. By that agreement, Tulsi Prasad undertook to execute the work and complete it by 30th June, 1949. It has been contended on behalf of the respondent No. 1 that Tulsi Prasad, by executing the agreement, was acting in his official capacity as headman of the Panchait and such contract is not contemplated by Section 7(d) of the Representation of the People Act, 1951. We do not find ourselves in agreement with this contention. Upon perusal of the terms of the agreement (Ex. 5) it becomes abundantly clear that it was a contract between Tulsi Prasad on one hand and the Collector on the other for execution of certain work. The following terms in the agreement, (i) that Tulsi Prasad and his heirs and assignees would be liable for proper accounting of the amount advanced by the Collector, (ii) that the Collector would be entitled to realise from Tulsi Prasad and his heirs and assignees either personally or from their properties all amounts unaccounted for or improperly spent, and (iii) that the Collector would also be entitled to recover, in case of Tulsi Prasad leaving the work incomplete, damages and loss from him and from his heirs and assignees, clearly indicate that it was a contract binding Tulsi Prasad, and not the Panchait, and we do not feel any hesitation in holding that the contract is one contemplated by Sec. 7(d) of the Act.

The most important question for consideration, however, is whether the contract was on behalf of the joint family of Tulsi Prasad or it was a contract by Tulsi Prasad in his individual capacity. There is no presumption in law that a business carried on by a member of a joint family is a joint family business. In *Vadi Lal Lalubhai versus Shah Khushal Dalpatram*, reported in I.L.R. 27 Bombay 157, it has been held that although a person carrying on business is a co-parcener in a joint family, it does not necessarily follow that all his co-parceners are his partners in that business, entitled with him to its rights and responsible with him for its liabilities; the fact of partnership must be proved by evidence showing that the persons alleged to be partners have agreed to combine their property, labour or skill in the business and to share the profits and losses thereof. There is no direct evidence in this case to show that the other members of the joint family, namely, Jamuna Prasad, Lakhendra Prasad and Jagdeo Tewari, agreed to combine their property, labour or skill in the said business and to share the profits and losses thereof. On the contrary, the terms of the agreement (Ex. 5), to which reference has already been made, indicate that Tulsi Prasad was entering into the contract in his individual capacity, and not on behalf of the joint family.

Mr. Brajeshwar Prasad Sinha has argued for the petitioner that, although there is absence of direct evidence to show that the business in question was a joint family business, there are certain circumstances which point to the above conclusion. It is said that the work was to be executed at Kaparpura where the family members had their home: that two of the co-parceners, namely, Jagdeo Tewari and Lakhendra Prasad, lived at Kaparpura, while the other two co-parceners, Jamuna Prasad and Tulsi Prasad, generally resided at Muzaffarpur; and that Jamuna Prasad had some hand in securing the work for Tulsi Prasad. In our view, these circumstances are not sufficient to warrant the conclusion that the above business in the name of Tulsi Prasad was a joint family business. Jogendra Prasad

Sharma (P.W. 25) has attempted to prove that Jamuna Prasad was also interested in the above contract work. He has said that he had seen Jamuna Babu looking into the accounts of minor irrigation contract in the compound of the Civil Court at Muzaffarpur in September or October, 1951, and that Jamuna Babu was looking into the accounts to find out what profits has been made. From the evidence of this witness it appears that the work had not been completed by that time. It is difficult to believe the story that, for the purpose of knowing the profits, the account was being examined before the completion of the work and that such examination was being done in the Civil Court compound. Jogendra Prasad is manifestly on inimical terms with Jamuna Prasad. The election of Jamuna Prasad to the District Board of Muzaffarpur was set aside on the petition of Jogendra Prasad. It was Jogendra Prasad who had filed objection to the nomination of Jamuna Prasad for election to the State Legislative Assembly, the election which is in question in this case. It will, therefore, not be safe to rely upon the statement of Jogendra Prasad unless it is corroborated by some independent and trustworthy evidence. Such evidence is wanting in this case.

There is no suggestion in this case, far less any proof, that the contract work, of the kind evidence by Ex. 5, was the ancestral business of the family, or that it was a business the income of which was maintaining the joint family. The facts and circumstances brought out in the evidence point to only one conclusion, namely, that the contract was a separate business of Tulsi Prasad Tripathi.

Section 7(d) of the Representation of the People Act, 1951, provides, *inter alia*, that a person shall be disqualified for being chosen as a member of the Legislative Assembly of a State if whether by himself or by any person or body of persons in trust for him or for his benefit or on his account he has any share or interest in a contract for the execution of any works undertaken by the State Government. Section 9(2) of the Act runs as follows "For the avoidance of doubt it is hereby declared that where any such contract as is referred to in clause (d) of section 7 has been entered into by or on behalf of a Hindu undivided family and the appropriate Government, every member of that family shall become subject to the disqualification mentioned in the said clause; but where the contract has been entered into by a member of a Hindu undivided family carrying on a separate business in course of such business, any other member of the said family having no share or interest in that business shall not become subject to such disqualification". In view of the finding that the contract in question was a separate business of Tulsi Prasad, no disqualification could be attached to Jamuna Prasad simply on the ground that he and Tulsi Prasad happened to be members of a joint family.

It has been argued by Mr. Lal Narain Singh that on the relevant date, namely, on 24th November 1951, the contract in question was not subsisting and so, even if it be held that Jamuna Prasad had share or interest in the contract, no disqualification could be attached to him. Mr. Brajeshwar Prasad Sinha has, on the other hand, contended that share or interest in a contract, contemplated by Section 7(d), will be deemed to subsist till all matters relating to the contract are settled. In the present case, the evidence discloses that the period of the contract, as stated in the agreement (Ex. 5), expired on 30th June 1949. The evidence also discloses that the work did not commence till a date much later than 30th June 1949; that notice under Section 5(A) of the Bihar Private Irrigation Works Act, 1922, informing the villagers that the work has already commenced had been issued after 30th June 1949; that report about the progress of the scheme was demanded in March 1950; that in June 1950 and September or October 1950 notices were issued upon Tulsi Prasad requiring him to refund the amount advanced with interest; that on 1st November 1950 orders were passed for issue of certificate proceeding against Tulsi Prasad for recovery of the amount; that during the pendency of the certificate proceeding Tulsi Prasad executed the work in part; and that on 14th February 1952 orders were passed closing the scheme (*Vide* Ex. 4). It is, however, unnecessary, in view of our clear finding that the business was a separate business of Tulsi Prasad, to discuss at length and decide the question whether any interest in the contract subsisted on the relevant date. We have found that no disqualification could be attached to Jamuna Prasad by reason of the contract.

The conclusion, therefore, is that the respondent No. 1 was not disqualified for being chosen as a member of the State Legislative Assembly.

Issue No. 2—It appears that Jamuna Prasad Tripathi (respondent No. 1) presented a nomination paper before the Returning Officer on 24th November 1951. One of the rival candidates, Jogendra Prasad Sharma (Respondent No. 3), filed a petition (Ex. 11a) supported by an affidavit (Ex. 10a) on 26th November 1951, objecting to the nomination of Jamuna Prasad Tripathi on the ground that he was disqualified under Section 7(d) of the Representation of the People Act, 1951.

The Returning Officer, after hearing both parties, passed orders on 27th November 1951 rejecting the objection and accepting the nomination (*Vide Ex. S*). After the orders were passed, Jogendra Prasad Sharma filed another petition (*Ex. 10*) supported by an affidavit (*Ex. 11*), stating a further ground of disqualification of Jamuna Prasad Tripathi.

It has been urged by the petitioner that the nomination of Jamuna Prasad Tripathi was improperly accepted by the Returning Officer. But we have already found that Jamuna Prasad Tripathi did not suffer from any disqualification and so it must be held that his nomination was not improperly accepted.

In view of this finding, the second part of this issue does not arise.

Issues No. 3, 4 and 5.—These issues may be conveniently taken up together.

The petitioner has also challenged the election of the Respondent No. 1 on the grounds of corrupt and illegal practices committed by the Respondent No. 1, his agents and party members with his knowledge and connivance and also on the ground of non-compliance with the rules at the time of polling. We should like to deal first with the corrupt and illegal practices alleged by the petitioner.

Sub-section (1) of Section 83 of the Representation of the People Act, 1951, lays down that an election petition shall contain a concise statement of the material facts on which the petitioner relies; Sub-section (2) provides that the election petition shall be accompanied by a list setting forth full particulars of any corrupt or illegal practice which the petitioner alleges, including as full a statement as possible as to the names of the parties alleged to have committed such corrupt or illegal practice and the date and place of the commission of each such practice. It will, thus, appear that full particulars of corrupt and illegal practices, alleged in the election petition, must be set forth in the list accompanying the election petition. The Law requires the petitioner to state the full particulars so that the opposite party may not be taken by surprise and may not be put to excessive expenses to meet the case of corrupt and illegal practices set up by the petitioner. Each single instance of corrupt or illegal practice alleged is a substantive charge and the petitioner cannot be allowed to prove a new instance of corrupt or illegal practice not mentioned in the election petition or in the list accompanying the election petition. In support of this view, reference may be made to Choudhry Sheo Karan Singh *Versus* Choudhry Sahib Ram, reported in Indian Election Cases, Volume I, by Doabia, at page 297.

In view of the above law, we have to consider the following instances of corrupt practices, full or sufficient particulars of which have been given in the list accompanying the election petition and which have been pressed at the time of the hearing

(i) It is alleged in paragraph 2 of the list that Jamuna Prasad Tripathi hired and used rickshaws for carrying voters to and from Kaparpura polling Station. Although the date is not mentioned in the list, there is sufficient indication of the fact that this thing happened on the second day of polling, that is, on 11th January 1952, when the polling agent of the petitioner made a complaint in the matter to the Presiding Officer of the Polling station.

(ii) Paragraph 6(a) of the list recites that on 10th January 1952 one Mangri Mallahin, widow of Basant Mallah, by falsely personating for Kalmiria, wife of Chulahi Mallah, obtained a ballot paper at Gausera Polling Station and when this matter was detected she disclosed that she had been misled to do this by the persons working for Jamuna Prasad Tripathi.

(iii) It is stated in paragraph 6(b) of the list that on 10th January 1952 one Sheikh Serajul, son of Sheikh Muhammad, attempted to obtain a ballot paper at Bishunpur Ganga polling station by falsely personating for Sheikh Thaga son of Sheikh Akloo. When this matter was detected, Serajul admitted before the Presiding Officer that he had done so at the bidding of the workers of Jamuna Prasad Tripathi.

The allegations made in paragraphs 1, 3 and 7 of the list do not amount to corrupt or illegal practices.

The ground alleged in paragraph 4 of the list was not pressed at the hearing of the arguments.

In paragraph 5 of the list an instance of bribery is given, but no evidence was adduced in proof of it.

In paragraph 8 of the list full or sufficient particulars of the alleged corrupt practice have not been stated.

Let us, now, examine the evidence with respect to the concrete instances of corrupt practices given in paragraphs 2, 6(a) and 6(b) of the list which have been pressed.

(1) *Hiring of rickshaws for carrying voters.*—Mathura Chaudhry (P.W. 2), one of the polling agents of the petitioner at Kaparpura booth, says in his evidence that he saw 11 or 12 hired rickshaws bringing voters of Jamuna Prasad, that he made inquiry from two of the rickshaw pullers and that he reported the matter to the Presiding Officer of the Booth. The Presiding Officer, Mr. Shyam Behari Singh (P.W. 2), has supported the statement of Mathura Chaudhry by deposing that he also saw some rickshaws bringing voters and that a polling agent of the petitioner made a written complaint to him which he made over to Mr. Hazari, the Magistrate in charge, for necessary action. There is an entry in the Diary dated 11th January 1952 of the Presiding Officer regarding this complaint (*Vide Ex. 7*). Mr. K. G. Hazari (P.W. 9) has corroborated the statement of Mr. Shyam Behari Singh and has further stated that he also made inquiry from 2 or 3 rickshaw pullers. Neither Mathura Chaudhry nor Mr. Hazari made any inquiry from the occupants of the rickshaws. Mathura cannot say the names of the rickshaw pullers from whom he made inquiry. From the evidence of Mr. Braj Bhusan Prasad (P.W. 24), Inspector of Police, who was also on duty there, it appears that the two rickshaw pullers from whom Mr. Hazari made inquiry were Fakira and Jan Mohamed. As the rickshaw-pullers, from whom inquiries are said to have been made, have not been examined in this case, their statements to Mathura Chaudhry and Mr. Hazari that the rickshaws had been hired by Jamuna Babu are not admissible in evidence. The mere complaint of Mathura Chaudhry that voters of Jamuna Prasad were coming in hired rickshaws was not sufficient to prove that the vehicles had been hired, and hire had been paid, by Jamuna Prasad. Similarly, the evidence of Lotan Sahi (P.W. 4) and Madan Mohan Prasad Thakur (P.W. 6), that they saw voters of Jamuna Prasad coming to the Booth in rickshaws, does not prove any corrupt practice on the part of Jamuna Prasad.

Tejnarain Singh (P.W. 3), another polling agent of the petitioner at Kaparpura Booth, has stated in his evidence that, on inquiry, one of the rickshaw pullers, Rasul Mian, told him that Jamuna Babu had engaged his rickshaw for bringing his voters on a daily hire of Rs. 5. Rasul Mian (P.W. 11), has, however, deposed that Tulsi Babu had engaged his rickshaw and had paid him Rs. 5 as hire. It is noteworthy that the name of Rasul Mian was not disclosed to any officer at the Polling Station on the date of the incident. From the evidence of Tejnarain it appears that he made inquiry from Rasul at the Hat which was at some distance from the Polling Booth, while the rickshaw was returning empty. There was no occasion there for such inquiry. The evidence of Rasul does not inspire confidence. Although he says in his examination in chief that Tulsi Babu had engaged his rickshaw and had paid him hire, his cross-examination discloses that his rickshaw had been engaged by a servant of Tulsi Babu whose name he does not know and whom he had never seen before the time of engagement. The evidence of the petitioner (P.W. 26), that he saw rickshaws working at Kaparpura Booth on 11th January 1952, does not prove any corrupt practice.

From the evidence on the record it appears that on 11th January 1952 some voters of village Kalwari came to Kaparpura Polling Station in rickshaws and that most of them were female voters. On behalf of the respondent No. 1, three witnesses, namely Rajmangal Chowdhry (R.W. 5), Rambrichh Chowdhry (R.W. 6) and Jagarnath Chowdhry (R.W. 7), who are all residents of Kalwari, have deposed that they and female members of their families had gone in rickshaws to the Polling Station and they had paid hires.

The oral evidence, on which the allegation of this corrupt practice has mainly rested, is either inconclusive or unreliable. The standard of proof required in the matter of corrupt practice is the same as that in the case of a criminal charge and suspicion, however strong, cannot take the place of proof. Keeping this principle in view, we find that the evidence produced is far short of proving the corrupt practice alleged.

(ii) *Impersonation by Mangri Mallahin.*—From the evidence of Ramasis Singh (P.W. 16), polling agent of the petitioner at Gowsera Polling Station, Dineshwar Singh (P.W. 18), and Bindeshwari Prasad Singh (P.W. 19) and from the report (Ex. 17) of the Presiding Officer, Mr. D. K. Mazumdar (R.W. 8), and the ordersheet (Ex. 15) of the Magistrate, it appears that on 10th January 1952 one woman, named Mangri, impersonated Kalmiria, wife of Chulahi Mallah, that after she had cast her vote she was detected and she admitted her guilt, and that she was prosecuted and convicted. These facts have not been disputed by the respondent No. 1. The respondent No. 1, however, contends that he or his agent had no hand in this impersonation. There is no clear allegation in paragraph 6(a) of the list that this impersonation was done at the instance of the respondent No. 1. What is stated in this paragraph is that Mangri disclosed that she had been misled to do this act

by the persons working for Jamuna Prasad. (P.W. 16) says in his evidence that Mangri stated to the Presiding Officer that she had done the act at the bidding of one Ambika Babu of Jian, a worker of Jamuna Babu, Mangri has not been examined as witness in this case and, in her absence, her statement referred to above is inadmissible and the evidence of (P.W. 16) on this point is only hear-say evidence.

P.W. 18 and P.W. 19 have, however, made a futile attempt to connect Jamuna Prasad with this incident. They have said that they saw Jamuna Babu and Ambika Babu coming to the Polling Station in a car, that the car subsequently brought some female voters, and that thereafter people were heard saying that Mangri had been caught impersonating another voter. Their evidence does not prove that Mangri was also brought in Jamuna Babu's car. The evidence of P.W. 18 that he saw Ambika Babu making payments to some voters and that of P.W. 19 that he saw Jamuna Babu making payment to 1 or 2 voters is inconclusive and untrustworthy; they have not said that any payment was made to Mangri.

Ambika Singh (R.W. 12) has denied that he ever went to Gowsera Polling Booth. His evidence shows that he acted as the polling agent of Jamuna Babu at another Booth.

It has been argued on behalf of the petitioner that Mangri was challenged by the petitioner's polling agent and so it cannot be supposed that she impersonated at the instance of the petitioner. There is, no doubt, considerable force in this argument. But from this circumstance alone it cannot be inferred that the act was done at the instance of the respondent No. 1. It appears that, at that Polling Station, there was simultaneous polling both for the House of people and for Bihar Legislative Assembly. It is possible that a candidate for a seat in the House of People may have induced Mangri to impersonate.

We, therefore, conclude that this corrupt practice also has not been proved.

(iii) *Impersonation by Sheikh Serajul.*—The evidence of Rukumdeo Misra (P.W. 12), polling agent of the petitioner at Bishunpore Ganga Booth, Mr. Bibeknand Sharma (P.W. 15), the Presiding Officer, coupled with his report (Ex. 9), Harihar Prasad Sahi (P.W. 20), and the petitioner (P.W. 26) proves that on 19th January 1952 one Sheikh Serajul impersonated Sheikh Thaga. He was caught and was prosecuted and convicted (Vide Ex. 14). These facts have not been challenged. But there is no reliable and sufficient evidence to prove the complicity of the respondent No. 1 in this affair. The statement of P.W. 12 that Serajul told the Presiding Officer that he had done the act at the bidding of Jamuna Babu and on receiving Rs. 2 from him is not admissible in evidence for the reason that Serajul has not been examined as witness in this case. There is no evidence worth the name that Jamuna Prasad paid money to Serajul. The statement of P.W. 20 that he saw Serajul talking to Jamuna Babu before Serajul entered the Polling Booth is not worth reliance. The circumstance that the petitioner's polling agent challenged Serajul will not necessarily point to the conclusion, as has been discussed in the case of Mangri, that Serajul impersonated at the instance of the respondent No. 1.

Our conclusion, therefore, is that this corrupt practice has also not been proved.

The only other matter that remains to be considered is whether there was non-compliance with the provision of any rule at the time of polling, and if so, whether the result of the election has been materially affected by such non-compliance. Only one instance of such non-compliance has been alleged and relied upon by the petitioner. On 4th January 1952 at Sirsia Polling Station the frontal symbol attached to the petitioner's ballot box was found absent for about half an hour and as a result thereof several voters were misled.

Lotan Sahi (P.W. 4), polling agent of the petitioner, says in his evidence that he brought the fact to the notice of the Presiding Officer who went inside and found the symbol absent and who then set the matter right by attaching a fresh symbol to the box. The evidence of the Presiding Officer, Nagendra Prasad Sinha (R.W. 9), and his Diary (Ex. F), however, give a different story, namely, that the symbol was not found taken off, but a part of it was found unpasted, and that it was re-pasted and set right.

Jagdish Lohar (P.W. 5) and Gajadhar Chamar (P.W. 7), two voters, have deposed to the effect that they found no symbol attached to the petitioner's box. The evidence of P.W. 5, however, shows that he had no difficulty in voting on account of there being no symbol attached to one of the boxes. This indicates that he voted for the candidate for whom he wanted to vote. Such difficulty was, however, felt by P.W. 7 who says that he threw the ballot paper on one of the boxes and did not put it inside the box. Assuming that one voter, namely, P.W. 7, or even 20 or 25 voters as suggested by the petitioner (P.W. 26), were misled by reason of the frontal symbol not being in order, it cannot be held that the result

of the election has been materially affected on that account. The difference between the votes secured by the respondent No. 1 and those secured by the petitioner being more than 3,000, a small number of 20 or 25 votes, even if they had gone to the petitioner, would not have materially affected the result.

This ground urged by the petitioner also fails.

We, in conclusion, decide these issues against the petitioner.

Issues Nos. 6, 7, 8 and 9.—From the above findings, it follows that the election in the constituency in question is not void, that the election of the respondent No. 1 is not liable to be set aside and that the petitioner is not entitled to a declaration that he has been duly elected.

The result, therefore, is that the election petition fails.

ORDER

The election petition be dismissed. The petitioner shall bear his own costs and shall pay Rs. 500 (Five hundred) as costs to the contesting respondent No. 1.

(Sd.) BASU PRASAD, *Chairman.*

(Sd.) HARGOBIND PRASAD SINHA, *Member.*

(Sd.) ADITYA NARAIN LAL, *Member.*

PATNA;

The 16th February, 1953.

[No. 19/107/52-Elec.III.]

P. S. SUBRAMANIAN,
Officer on Special Duty.